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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Local)
Competition Provisions of the)
Telecommunications Act of 1996)

CC Docket 96-98

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**AT&T CORP'S REPLY TO OPPOSITION TO
PETITIONS FOR RECONSIDERATION AND CLARIFICATION
OF THE THIRD REPORT AND ORDER**

Pursuant to Section 1.429 of the Commission's rules, AT&T Corp. ("AT&T")
respectfully submits this reply to the oppositions of other parties to AT&T's Petition for
Reconsideration and Clarification of the Third Report and Order.

Unbundled Access to Equipped Loops – In its petition, AT&T asked the Commission
to reconsider its decision not to require ILECs to provide unbundled access to an xDSL-
equipped loop as part of the UNE-platform. AT&T demonstrated that access to such loops is
essential if new entrants in the market for voice and data services are to compete effectively on
a mass market basis with ILECs, which are the only carriers today that can widely offer
consumers a combined package of voice and xDSL services.¹

The ILECs' object to this request because it threatens their latest effort to frustrate
competition through the UNE platform. With the resounding rejection by the Supreme Court
of their legal objections to providing access to the UNE-Platform, the ILECs are now turning
to new means of purportedly complying with the Act while impeding – as they have all along –

¹ AT&T Pet., p. 2.

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CLECs' ability to provide broad-based mass market local telephony. Most pertinent here, since the issuance of the *UNE Remand Order*,² every RBOC (and GTE)³ has made clear that it will not permit CLECs to offer voice and data services using UNE-P, the availability of which the Commission has found to be critical for residential competition.⁴

At the same time that they are forestalling competitive voice and data services, ILECs are aggressively marketing voice and advanced services bundles to their residential customers. They also are attempting to develop and implement network system architectures which deploy fiber deep within their networks, such as SBC's Project Pronto, in an anticompetitive fashion. SBC's recent submission regarding Project Pronto,⁵ for example, makes clear that SBC seeks to impermissibly dictate the terms and conditions under which competitors may deploy advanced services over SBC's ILECs' networks, including impermissible restrictions upon remote terminal collocation.⁶ Indeed, SBC has acknowledged that with its new architecture, the efficient way for it to meet its statutory obligations is for the ILEC to own the equipment providing the DSLAM functionality, *i.e.*, the ADLU, and provide such functionality to data

² Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238 (Nov. 5, 1999) ("*UNE Remand Order*") ¶¶ 253, 273, 296.

³ AT&T documented Bell Atlantic's and SBC's position in its opening comments (pp. 6-7). In their comments filed March 22, 2000, BellSouth (p. 6), GTE (p. 8 n.19 (referencing its position in the *Line Sharing* proceeding)), and U S WEST (pp. 13-15) make clear that they likewise will not allow UNE-P CLECs to provide data services using the platform or provide the operational support necessary for UNE-P CLECs to provide such services with a cooperating data CLEC.

⁴ *UNE Remand Order*, ¶ 273.

⁵ See Common Carrier Bureau Seeks Comment on SBC's Request for Interpretation, Waiver or Modification of the SBC/Ameritech Merger Conditions, FCC Public Notice, CC Docket No. 98-141, ASD File No. 99-49 (rel. Feb. 18, 2000) ("*SBC Merger Modification Proceeding*").

⁶ See, e.g., Comments of AT&T Corp., *SBC Merger Modification Proceeding* (filed Mar. 3, 2000).

CLECs (“DCLECs”).⁷ Yet, SBC steadfastly refuses to provide identical functionality to carriers that wish to provide competing voice and data services using UNE-P.⁸

These actions by the ILECs demonstrate that the Commission erred when it declined to require the provision of equipped loops based upon concerns that to do so would “stifle burgeoning competition in the advanced service market.” *UNE Remand Order*, ¶ 316. Indeed, as noted below, it is the lack of such a requirement that ILECs are using to stifle not only advanced services competition, but competition for local voice service as well.

BellSouth argues (pp. 5-6) that the Commission has already considered and rejected arguments that DSLAM functionality should be provided to CLECs on an unbundled basis, and that CLECs are successfully provisioning xDSL service today. Yet, no ILEC has claimed – much less demonstrated – that any competitive carrier is offering widespread residential voice and data service, much less over a single line, in a manner that can compete with the ILEC. The reason is simple. As the Commission recognized in the *UNE Remand Order*, “the costs and operational delays associated with collocating in multiple end offices” would impair new entrants’ ability to provide mass market residential local voice and advanced data service. *Id.*, ¶¶ 273, 309. As CompTel has pointed out (p. 11), “the fixed costs of collocation are so substantial that competitive carriers cannot reasonably be expected to incur those costs in smaller offices.” Moreover, “a CLEC’s inability to provide advanced data services will inevitably have a deleterious impact on the development of voice competition in the mass market as well.”⁹

⁷ Letter for Paul K. Mancini, Vice President and Assistant General Counsel, SBC, to Lawrence E. Strickling, Chief, Common Carrier Bureau (date Feb. 15, 2000).

⁸ See Comments of AT&T Corp., at 13; Rall Decl. at ¶ 8, *SBC Merger Modification Proceeding*, (filed Mar. 3, 2000).

⁹ Sprint, p. 8.

Recognizing that the expense and delay associated with collocation constitutes a significant barrier to broad-scale voice and data competition, ILECs have done their best to eviscerate UNE-P by making collocation a mandatory component of any attempt to offer both voice and data services. U S WEST, for example, claims (p. 14) that AT&T – and other CLECs – may provide voice and data service by purchasing UNEs to provide voice service “and combining these with a DSLAM at its own collocation space.” Moreover, even though U S WEST currently splits the loop into low frequency analog voice spectrum and high frequency data spectrum when it provides voice and advanced services to its own end-user customers, and will do so when it “line shares” with DCLECs, it insists that AT&T – the major competitive threat to its mass market voice monopoly – perform the discriminatory and superfluous act of collocating if it seeks to have a cooperating CLEC provide the data services. *Id.* There is simply no legal or policy basis for this discrimination, which is intended to perpetuate the ILEC’s monopoly over the local loop for voice service and extend that monopoly to data service.

For its part, SBC has flatly refused to implement the processes and procedures necessary for a CLEC providing voice services using UNE-P to be able to provide data services over the same UNE loop (either itself or with a DCLEC partner),¹⁰ despite the fact that these support processes should be virtually identical to those SBC employs with its advanced services affiliate or with a line sharing data CLEC. Once such procedures are developed and implemented, perhaps then (and only then) will CLECs be able to provide the services they seek to offer without access to ILEC DSLAMS.

¹⁰ See n.5, *supra*.

U S WEST contends that ILEC incentives to invest in advanced services would be reduced if packet switching (which, under the Commission's definition, would be part of an equipped loop) were unbundled.¹¹ That is nonsense. As a preliminary matter, the unbundling of equipped loops is not the same as unbundling of packet switching. Moreover, requiring unbundling of DSLAMs and packet switching "will not slow deployment of advanced services, because it will not affect the primary market cause for deployment: *i.e.*, deployment of cable modem services."¹² And, "given the explosive growth in the data market and the potential competitive threat posed by cable companies, it is difficult to believe that ILECs will allow their network to become technologically antiquated."¹³

BellSouth argues (p. 6) that the Commission has already determined that CLECs seeking to provide both voice and data service – either on their own or through an arrangement with a DCLEC – must put in their own splitter, and thereby be forced to collocate, citing footnote 95 of the *Line Sharing Order*.¹⁴ AT&T has addressed and refuted BellSouth's misreading of the *Line Sharing Order* in that proceeding.¹⁵ A splitter is an ancillary electronic device that is attached to the loop and, as such, is part of the loop UNE. No one has suggested that the splitter is a "standalone" UNE. In the situation where AT&T – or any other CLEC – provides voice service to a customer using UNE-P, the Commission should require the ILEC

¹¹ The Commission erroneously found the DSLAM to be a packet switch, which it is not as it only performs communications formatting, modulation and transmission management functions. The ATM functionality is only required to permit delivery of communications to the carrier of choice – an interconnection rather than a packet switching function. All this was made manifestly clear in response to SBC's request for clarification/modification of the SBC/Ameritech merger conditions in CC Docket No. 98-141, ASD File No. 99-49. See *e.g.* AT&T Reply Comments, *SBC Merger Modification Proceeding* (filed Mar. 10, 2000). Thus, none of the components of an equipped loop are providing a packet switching function.

¹² CompTel, p. 10.

¹³ Sprint, p. 8.

¹⁴ Third Report and Order, Fourth Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, CC Docket No. 96-98, FCC 99-355 (Dec. 9, 1999) ("*Line Sharing Order*").

to provide the electronics on the loop – just as it provides electronics for an ISDN or T1 line – so that the full features and functionalities of the loop can be realized,¹⁶ without imposing on CLECs the costs and delays associated with collocation that would impair the development of mass market competition.

Withdrawal of OS/DA as a UNE – None of the ILECs provide any legitimate basis for opposing AT&T's request that the Commission clarify when ILECs are no longer required to provide OS/DA under the Act. The requested clarifications do not in any way revise or expand the ILECs' obligations; they simply establish procedures that prevent an ILEC from unilaterally declaring that the conditions for withdrawing OS/DA (i.e., when it is providing customized routing) have been satisfied, and allow for state commissions to make these determinations in the event of any dispute. If, as SBC asserts (p. 33), the ILEC is in fact providing customized routing in accordance with the Act and relevant implementing regulations, the requested clarification will not affect it. Further, because customized routing is usually not implemented on a region-wide basis (see GTE, p. 14), notice to CLECs and a reasonable transition period is necessary to avoid disruption to customers and carriers.

Unbundled Local Circuit Switching ("ULS") – AT&T and other CLECs have demonstrated that the four-line rule adopted by the Commission is arbitrary and creates illogical consequences and therefore should be modified.¹⁷ AT&T believes that the most appropriate solution is to adopt a facilities-based rule that applies to DS-1 facilities, which do not face the

¹⁵ AT&T Reply to Responses to Petitions for Clarification and Reconsideration, at 5, CC Docket 98-147 and 96-98 (Apr. 5, 2000).

¹⁶ *See UNE Remand Order* ¶ 175 ("the loop includes attached electronics, including multiplexing equipment used to derive transmission capacity," and "excluding such equipment from the definition of the loop would limit the functionality of the loop").

¹⁷ *E.g.*, AT&T Petition, pp. 13-17; Birch Petition, pp. 3-8; CompTel Petition, pp. 2-5; MCI Recon Petition, pp. 22-23.

practical and economic impediments of loop hot cuts.¹⁸ The use of a facilities-based threshold also resolves claims that the cutoff for the ULS exception is arbitrary, because there are clear distinctions between the provisioning of a DS-1 facility and hot cut loops.

The incumbent LECs have provided no basis to oppose the request of AT&T and other CLECs that the Commission narrow the exception to the ULS obligation. These commenters merely repeat the central premise of their position that the FCC correctly and emphatically rejected in its Order: that the “impairment” test cannot be satisfied in any location where CLECs have deployed their own switches.¹⁹ As the Commission found, however, the availability and deployment of alternative switching is not dispositive of the issue. Rather, the question is whether, after taking into account economic and operational considerations (e.g., the “hot cut” process), CLECs would be impaired in their ability to provide the services they seek to offer absent access to ILEC ULS. None of the ILECs address this issue in these terms.

Further, the ILECs’ claims about the inherent difficulty of “line drawing” simply confirm the need for narrowing the exception to DS-1 facilities. See, e.g., SBC Opposition, p. 9 (“*Any cut-off the Commission establishes will necessarily raise these types of line-drawing issues*”) (emphasis in original). In contrast to the current exception for four or more lines, the rule urged by AT&T and supported by other CLECs is the outcome of an analysis that determines at which point it becomes feasible for the customer or carrier to use a DS 1 loop facility or other technology that avoids the cumbersome individual loop hot cut process. There is thus an analytical and evidentiary basis for the proposed rule that is lacking for the existing rule.

Finally, the current exception for 4 or more lines will clearly impair CLECs from providing the services they seek to offer. Birch (p. 3), a small CLEC, states “[w]ith the current

¹⁸ See, e.g., AT&T Opposition and Comments, pp. 6-8; AT&T Petition, p. 15; CompTel Petition, p. 4.

¹⁹ BellSouth Opposition, p. 7; GTE Opposition, p.11, U S West Response, p. 2.

three-line maximum, no CLEC with a non-facilities-based strategy can realistically be expected to enter a top 50 MSA market and serve customers in [density] zone 1.” And if a customer’s addition of a single line could disentitle a CLEC to the practical and economic benefits of obtaining ULS at a cost-based rate, even larger CLECs may be discouraged from serving such customers. Moreover, a line-based threshold, unless carefully clarified invites manipulation by ILECs, such as attempts to game the definitions of “customers” and “lines” and the way lines are counted, so as to defeat the purpose of the rule itself. Accordingly, AT&T strongly supports the use of DS-1 facilities as the basis for any exception to the availability of ULS at cost-based rates.

If the Commission declines to adopt a facilities-based cutoff, AT&T demonstrated (Petition, pp. 15-17) that the lowest reasonable line-based cutoff should be at 8 lines. Even using forward-looking DSL technology that is only beginning to become available, eight lines is the lowest economic crossover point with cost-based UNE rates -- a threshold attested to by an expert witness. The Commission, of course, would be fully justified in selecting a higher crossover point based on the use of DS-1 facilities, as suggested by other CLECs.²⁰

If the Commission nevertheless declines to adopt a facilities-based rule and adopts a voice line based rule,²¹ it should also adopt crucial clarifications in order to minimize the ILECs’ opportunities to use manipulation and gamesmanship to impair CLECs’ ability to compete. Contrary to the ILECs’ claims (e.g., SBC Opposition, pp. 9-12), AT&T’s requests for clarification of the Commission’s rules are reasonable and lawful and necessary. Indeed, they follow directly from the Commission’s analysis in the Order .

²⁰ In analyzing a crossover point for DS-1 loops, the Commission should be aware that CLECs (or customers) must incur additional CPE costs to implement voice grade service over such loops.

²¹ Contrary to SBC’s claim (p. 11), there is no legitimate basis for including DSL loops (other than ADSL loops) in any line count for the ULS exception, because such loops are not generally purchased to connect to a circuit switch. (See AT&T Petition, p. 18).

AT&T's first request for clarification is that individual customers of record at the same location must be treated separately. Even SBC does not suggest that it is unreasonable to treat unrelated occupants of a multi-user premise (business or residential) as separate customers when they individually subscribe to local service. Indeed, the situation SBC (p. 10) refers to arises only if a landlord (or similar aggregator) is the sole customer at such a premise, in which case there is in fact only one customer of record for the entire location. Thus, AT&T's clarification should be adopted.

AT&T's second request for clarification would prevent an ILEC from denying CLECs access to ULS at cost-based rates for the purpose of serving a customer who has separate physical locations that are billed as a single account (e.g., a chain of coffee shops in a city, each with a few phone lines per location). Each of those individual locations represents a separate installation that would have to be separately subject to hot cut procedures and other potential impairments recognized by the Commission. CLECs cannot benefit from economies of scale in provisioning service for such customers and thus would face significant economic hurdles if they were denied access to ULS simply because of a billing convenience previously requested by the customer.

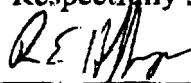
AT&T's third request for clarification applies to cases in which a CLEC obtains no more than the permitted number of lines for a customer at a given location at TELRIC rates. In such cases the total size of the customer's account is irrelevant, because the CLEC only serves a limited number of lines for the customer and again cannot obtain significant scale economies.²² Thus, CLECs should in all cases be permitted to obtain ULS for the permitted number of lines at

²² In this regard, SBC's assertion that a CLEC would serve scores of lines with its own switch and retain some minimum number of lines simply to obtain ULS at a TELRIC rate is preposterous. There is no reason to expect that once a CLEC actually deploys its own circuit switch to serve a specific customer it would continue to purchase ILEC ULS for that customer.

a cost-based price, regardless of whether the customer has additional lines served by other carriers.²³ Moreover, there also is no reason why a CLEC should be denied access to cost-based prices for local switching immediately upon adding a few additional lines (albeit at a different price) using the ILEC's network elements or services. Customers' service needs change much more quickly than a CLEC's ability to move such service to its own facilities, particularly if new facility or equipment deployment is required. Accordingly, cost-based pricing for the permitted number of lines should remain available for the longer of the time it would take to establish a collocation to serve that customer (under standard service intervals in that ILEC area) or the nine month transition period that SBC itself (p. 9) supports.

Respectfully submitted,

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April 5, 2000

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Thus, an ILEC should never be permitted to exercise the exception simply by selling an additional line to an end user so that the threshold is exceeded and other carriers could not have access to ULS at cost-based rates.

CERTIFICATE OF SERVICE

I, Denise M. Dagostino, do hereby certify that on this 5th day of April, 2000, a copy of the foregoing "AT&T Corp's Reply To Opposition To Petitions For Reconsideration and Clarification of the Third Report and Order" was served by U.S. first-class mail, postage prepaid, on the parties listed on the attached service list.



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